

keeping boundary marks in thorough repair, on condition that such gifts are given only for exceptional merit. The expenditure incurred annually by each Commissioner for the purpose should not exceed Rs. 100. (G. R. No. 309, dated 14th January 1889.)

CHAPTER X.

OF LANDS WITHIN THE SITES OF VILLAGES, TOWNS, AND CITIES.

126. It shall be lawful for the Collector, ^{Limits of sites of villages, towns and cities how to be fixed.} or for a survey officer, acting under the general or special orders of Government, to determine what lands are included within the site of any village, town, or city, and to fix, and from time to time to vary the limits of the same, respect being had to all subsisting rights of land holders.

N. 1. Under this section the Collector should take action by varying the limits of the site so as to include such land as is already built upon or is likely in a few years to come under brick and mortar owing to the extension of a city. The city survey can then be notified as applying to the new site so determined by the Collector under this section.

N. 2. A city survey manual with chapters on Plane table surveys, and minor triangulation has been prepared by F. G. H. Anderson Esquire, M. A. I. C. S. Settlement Commissioner and Director of Land Records, Bombay. This is intended for the use of city survey officers.

G. (1) General Survey of village sites abandoned.—It having been deemed inexpedient to proceed further in the matter of the general survey of village sites contemplated in the Resolutions of ^{4305 } of} ^{5930 } 1879}

Government noted in the margin, there is no objection to disposing of occupancies of building sites in accordance with the rules framed under the Land-Revenue Code, 1879. (G. R. No. 4099, dated 21st May 1884.)

G. (2) Principles of City Surveys and assessment:—Although Government have, under the provisions of this and the following sections, the power to order the Survey and assessment of lands in the sites of towns and villages, and can in exercise of that power impose assessment on any such lands it would not be just and fair if such assessment were ordered to be imposed in isolated cases only. Accordingly in a case in which certain lands in a village site, which had been exempt from assessment under certain circumstances, were assessed by the Collector on those circumstances being changed it was held by the Legal Remembrancer that the action of the Collector was objectionable. The Legal Remembrancer stated—

“1. * * *

“2. So far as regards the assessment of land of which the occupancy may hereafter be granted, the subject is free from difficulty. Under Sections 45 and 48 of the Land Revenue Code, all land is liable to the payment of land-revenue, no matter what purpose it is put to, unless it is exempted under a special contract or by any law for the time being in force. To land of which the occupancy is to be newly given no such exemption can apply. With a view to the settlement of the land-revenue, it is competent to Government, if they think fit, to direct, under Section 95 of the Code the survey of vacant lands in village sites. When such an order is given, the officer in charge of the Survey will fix the assessment under Section 100 of the Code. But in respect of lands not within the local operation of an order under Section 95, the assessment has to be fixed under Section 52 by the Collector, subject

to rules or orders made in this behalf by Government. The Land Revenue Code Rules Nos. 23—28 (now 24—30) are the existing rules prescribed by Government for the guidance of Collectors in allotting building-sites, and I believe they are found sufficient.

" 3. * * *

" 4. The law as to the assessment to the land-revenue of lands in village-sites already occupied is precisely the same as that applying to lands which may hereafter be given out for the occupation described in paragraph 2. Government may direct a survey of all or any of such lands under Section 95, and then the assessment thereof will be made under Section 100 by the officer in charge of the Survey, or if no such survey is ordered by Government, the Collector may, under Section 52 fix the assessment. In either case the following limitations apply, *viz* :—

- (1) Land wholly exempted under the provisions of any special contract with Government or any law for the time being in force must be exempted (Section 45) ;
- (2) Respect must be had to all rights legally subsisting in the case of lands partially exempt from land-revenue, or the liability of which to payment of land-revenue is subject to special conditions or restrictions. (Section 52, proviso, and Section 100, paragraph 2.)

" 5. Occupied lands in village sites may be divided into three classes (namely):—

- (1) Lands granted under British rules ;
- (2) Lands held from a time anterior to the British rules ;
- (3) Lands unauthorizedly occupied since the introduction of the British rule.

" 6. Lands of the 1st class have, I believe generally, been granted on stated terms under a written

agreement or lease or similar document and either the first or the second of the two limitations mentioned in paragraph 4 would prevent any modification of those terms now.

"7. In the second class there would, I imagine, be few lands for which an original documentary title could be proved. But in most instances possession from time immemorial could be established, and in such circumstances the Civil Courts would presume a valid grant and recognize the claimants' proprietary right. Along with the fact of immemorial possession, the holders of these lands would, as a rule, be able to show that they have never been subject to the payment of land revenue.

"8. The holders of lands of the third class would, of course, have no documentary evidence of title. All that they could establish would be, at the most, about sixty years' possession and immunity all that time from payment of land-revenue.

"9. The City Survey Act (Bombay Act IV. of 1868) confirmed every entire or partial exemption from land-revenue proved to have been enjoyed for five years previous to the application of that Act or of Bombay Act I. of 1865 to the town or city. When the Land Revenue Code Bill was first introduced it was proposed to extend this rule to all village-sites, but after much discussion the provisions finally adopted were those set forth in paragraph 4. According to these, in the absence of a 'special contract with Government,' it has to be seen whether any land in a village-site is exempted from land-revenue under 'any law for the time being in force'; if it is not so exempted it is liable to be assessed, subject to the orders of Government, either by the Collector under Section 52 of the Code or by the officer in charge of a Survey under Section 100.

"10. The only Acts under which such exemption might possibly be claimed are Act X. of 1852

and Bombay Acts II. and VII. of 1863, in the provinces to which they are respectively applicable. Government are aware that the High Court held some years ago that previous to the passing of Bombay Act III of 1868, neither Regulation XVII of 1827 nor Bombay Act VII of 1863 applied to village-sites. By Section 17 of Act X. of 1876 the Legislature, however, declared that Regulation XVII. of 1827 should be deemed to be and to have always been in force in the sites of villages, towns and cities. No such general declaration has been made with regard to Bombay Act VII. of 1863. But Section 127 of the Code enacts that Act XI. of 1852 and Bombay Acts II and VII of 1863 shall be deemed to be applicable and to have always been applicable to all lands within the sites of cities and towns in which an enquiry under Bombay Act IV. of 1868 has been made, which have been hitherto ordinarily used for purposes of agriculture only; but that the provisions of those Acts shall not be deemed applicable to any other-lands within the limits of the sites of the said cities and towns. The effect of these two enactments, Section 17, Act X. of 1876, and Section 127 of the Land Revenue Code is, I think, to confirm the previous decision of the High Court as to Bombay Act VII. of 1863. The Judges would say that the Government of India, whilst declaring the Regulation XVII. of 1827 is in force in the sites of villages, towns and cities, made no mention of Bombay Act VII. of 1863 and that therefore their previous decision as regards that Act remains unaffected. Moreover the local Legislature has since declared of that Act XI. of 1852 and Bombay Act II. of 1863 that their provisions do apply to certain lands within the sites of certain towns and cities, thus leaving it to be inferred that they do not apply within the sites of other towns and cities or of villages.

"11. For these reasons it appears to me that Act XL of 1852 and Bombay Acts II. and VII. of 1863 are not applicable to lands within the sites of villages, towns and cities, except to the extent indicated in Section 127 of the Land Revenue Code. If this view is correct it follows that all such lands are liable to be assessed to the land-revenue unless they are exempted therefrom under the provisions of any express contract with Government. Therefore all lands in the second class, except the few which can establish a documentary title to exemption, and all lands in third class are liable to be assessed, under the law as it now stands, to the land-revenue.

"12. * * * * *

"17. But if it is not the present intention of Government to assess occupied lands in village sites generally, it seems to me impossible to justify the assessment of such holdings in isolated cases. On the principle that the greater includes the less, the Land Revenue Code, which empowers Government to direct the assessment of all such lands, may, of course, be held to authorize the assessment of any one particular holding. But such laws are not enacted to enable Government or their officers to levy a tax from one person out of a thousand and to let the other nine hundred and ninety-nine go free, and I very much doubt whether the Civil Courts would uphold a levy made on such a system.

"18. * * *

"19. The old rule regarding pardi lands has been embodied in No. 54 (now omitted) of the Land Revenue Code Rules. It applies only to patches of open ground 'surrounding houses.' So long as a piece of ground is 'pardi land' within the above description it is subject to the same rules regarding assessment as the house-site which it surrounds. When, however, it ceases to answer to the above description, the question of assessing it or of put-

ting fresh assessment upon it is, I think, legally open to consideration under paragraph 2, Section 48 of the Land Revenue Code. But if in the village or town in which the land is situate, house sites generally are not subject to assessment, it seems to me that it would be unreasonable for the Collector to place an assessment upon that piece of land alone." (G. R. No. 4344, dated 18th June 1886.)

[^a] **127.** Act XI of 1852 and Bombay Act XI of 1852 and Bombay Act II and VII of 1863 how far applicable to lands in such sites. Acts II and VII of 1863, shall be deemed to be applicable, and to have always been applicable, in the territories to which they respectively extend, to all lands within the limits of the site of any town or city in which an inquiry into titles has been made under the provisions of Bombay Act IV of 1868[^b] which have been hitherto ordinarily used for agricultural purposes only; but the provisions of the said Act shall not be deemed applicable to any other lands within the limits of the site of any such town or city.

[a] As to the local repeal of section 127, see para. 5 of footnote [a] on p. 1, *supra*.

[b] Bom. IV of 1868 is repealed by section 2 of this Act which has been repealed by Bom. IV of 1913, s. 5.

[^a] **128.** The existing exemption from payment of land revenue of lands other than lands Existing exemption when to be continued in case of certain lands in towns and cities in which Bombay Act IV of 1868 has been in operation; which have hitherto been ordinarily used for purposes of agriculture only, situate within the sites of towns and cities in which an inquiry into titles has been made under the provisions of Bombay Act IV of 1868,[^b] shall be continued;

1st.—if such lands are situated in any town or city where there has been in former years a survey which Govern.

ment recognize for the purpose of this section, and are shown in the maps or other records of such survey as being held wholly or partially exempt from the payment of land revenue ;

2nd.—if such lands have been held wholly or partially exempt from the payment of land revenue for a period of not less than five years before the application of Bombay Act I of 1865,^[c] or IV of 1868^[d] to such town or city ;

3rd.—if such lands, for whatever period held; have been held wholly or partially exempt from payment of land revenue under a deed of grant or of confirmation issued by an officer whom Government recognize as having been competent to issue such deed.

[a] As to the local repeal of section 128, see para. 5 of footnote [a] on p. 7, *supra*.

[b] Bom. IV of 1868, is repealed by s. 2 of this Act, which has been repealed by Bom. IV of 1913, s. 5.

[c] Bom. I of 1865 (except ss. 37 and 38.) is repealed by section 2 of this Act, which has been repealed by Bom. IV of 1913, s. 5.

[d] Bom. IV of 1868 is repealed by section 2 of this Act, which has been repealed by Bom. IV of 1913, s. 5.

Right to
exemption to
be determined
by the
Collector.

[^a] **129.** (1) Claims to exemption under the last preceding section shall be determined by the Collector after a summary inquiry, and his decision shall be final.

[^b] (2) Any suit instituted in a Civil Court to set aside any order passed by the Collector under

sub-section (1), in respect of any land situate within the site of a village, town or city, shall be dismissed (although limitation has not been set up as a defence) if it has not been instituted within one year from the date of the order.[^b]

[a] As to the local repeal of ss. 129 to 131, see para. 5 of foot-note [a] on p. I, *supra*.

[b—b] This sub-section was added by Bom. XI of 1912, s. 2, which also enacted that the original section 129 should be numbered sub-section (1) of s. 129.

N. 1. Under Section 129 (1) of the Land Revenue Code claims to exemption are to be determined by the Collector after a summary enquiry and his decision shall be final.

An enquiry officer appointed by Government to hold this summary enquiry is therefore like an Assistant or Deputy Collector exercising the powers of a Collector.

Appeals against orders passed by an Assistant or Deputy Collector lie to the Collector. On the same analogy appeals against the orders of an enquiry officer should apparently lie to the Collector.

N. 2. *Vide* G. 2 under Section 19.

G. 1. Claims to exemption. Assignment of power to decide.—It is better to assign powers (specially) under this section than to trust to Section 2 as continuing the powers already conferred by the Collector upon enquiry officers under Act IV. of 1868. The order passed by such officers shall be final in the sense of Section 212, but they may be modified by Government or a suit brought under Section 135. (G. R. No. 5728, dated 27th October 1879.)

[^a] **130.** In towns and cities to which section 128 applies, the holders of any lands other than lands which have hitherto been used for purposes of agriculture only, which have been

Occupancy price payable, in addition to assessment in certain cases.

unauthorizedly occupied for a period commencing less than two years before Bombay Act I of 1865^[b] or IV of 1868^[c] was applied to the town or city in which the said lands are situate, shall be liable to pay^[d] a price for the said lands^[d] in addition to the land revenue assessed thereupon.

The said^[e] price shall be determined according to the provisions of section 62.

[a] Vide (a) under s. 129. [b] Vide (c) under s. 128. [c] Vide (d) under s. 128.

[d—d] These words were substituted for the original words "the price of the occupancy of the said lands" by Bom. IV of 1913, s. 61.

[e] This word was substituted for the original words "occupancy price" by Bom. IV of 1913, s. 61.

G. I. Interpretation.—Section 130 in no way modifies Section 61 and should not be read with it. (G. R. No. 172, dated 12th January 1880.)

Survey of
lands in
such sites
how to be
conducted.

^[a]**131.** If the Governor in Council shall at any time deem it expedient to direct a survey of the lands other than those used ordinarily for the purposes of agriculture only within the site of any village, town, or city, under the provisions of section 95, or a fresh survey thereof under the provisions of section 106, such survey shall be conducted, and all its operations shall be regulated, according to the provisions of Chapters VIII and IX of this Act: Provided that nothing contained in sections 96, 97, 101, ^[b]104, or 118 thereof shall be considered applicable to any such survey in any town or city containing more than two thousand inhabitants.

Proviso.

[a] As to the local repeal of ss. 129 to 131, see para. 5 of footnote [a] on p. I, *supra*.

[b] Figure repealed by Bom. IV of 1913, s. 62 is omitted.

Section 131—

Insert N. 3 :—

“ For city surveys in alienated villages, *vide* G. 34 under sections 216–217.”

SUMMARY (S. 131.)

City survey—

(1) Budget provision	...	...	G 3
(2) Cadastral method	...	...	G 2
(3) Fees include cost of officer hearing appeals	...	...	G 5
(4) Map	...	...	G 4
(5) Municipality	...	...	G 1
(6) Non-agricultural lands	...	...	N 2
(7) No Notification necessary	...	...	N 1

N. 1. No notification under this section is necessary.

N. 2. Under section 131 of the Land Revenue code a city survey can only be made of lands other than those ordinarily used for agricultural purposes only within the site of a village which term includes a town or city.

G. 1. Surveys of cities or towns and preparation of maps and Records of Rights will not be undertaken by the survey department. This work should be done by municipalities.

(Government of India circular No. 11-190-1 of 23rd July 1906 and Bombay Government G.R. No. 5217 dated 3rd September 1906)

G. 2. A city survey should be made by cadastral and not by topographical method of survey. This G. R. prescribes the duties and procedure of an enquiry officer (G.R. No. 995 dated 4th February 1910).

G. 3. No budget provision is necessary for expenditure in connection with city surveys. The expenditure should be met from survey fees. (G.R. No. 4806 dated 18th May 1911)

G. 4. This G.R. prescribes the details in city survey and other village site survey maps. (G.R. No. 6315 dated 8th July 1914)

G. 5. Survey fees may include cost of an officer to hear appeals. (G.R. No. 10321 dated 24th August 1917)

In certain cases a survey-fee to be charged.

[a] **132.** When a survey is extended under the provisions of the last preceding section to the site of any town or city containing more than two thousand inhabitants, each holder of a building-site shall be liable to the payment of a survey-fee to be assessed by the Collector under such rules as may be prescribed in this behalf from time to time by Government, provided that the said fee shall in no case exceed [b] ten rupees for each building site or any portion thereof held separately [b]. The said survey-fee shall be payable within six months from the date of a public notice to be given in this behalf by the Collector after the completion of the survey of the site of the town or city, or of such part thereof as the notice shall refer to.[c]

[a] As to the local repeal of s. 132, see para. 5 of foot-note [a] on p. I, *supra*.

[b—b] These words were substituted for the original words "rupees five for each survey number" by Bom. IV of 1913, s. 63 (a.)

[c] The third paragraph of s. 132 repealed by Bom. IV of 1913, s. 63 (b) is omitted.

G. I. Survey fees.—Fees should be charged to Government and Municipalities. But inasmuch as Government pay the cost of a city survey in the first instance, the simplest plan would be to deduct from the total cost the estimated cost of surveying Government properties and to distribute the remainder over the municipality and private owners. Open sites should be charged for, but the Collector would charge lower rates for properties which cost very little to survey for that is one of the matters which he has to bear in mind. (G. R. No. 15407, dated 21st December 1917).

[^a] **133.** Every holder of a building-site as Sanad to be granted without extra charge. aforesaid shall be entitled, after payment of the said survey-fee, to receive from the Collector without extra charge one or more sanads, in the form of Schedule H, [^b] or to the like effect [^b] specifying by plan and description the extent and conditions of his holding :

Provided that if such holder do not apply for ^{Proviso.} such sanad or sanads at the time of payment of the survey-fee or thereafter within six months from the date of the public notice issued by the Collector under the last preceding section, the Collector may require him to pay an additional fee not exceeding one rupee for each sanad.

Every such sanad shall be executed on behalf of the Secretary of State for India in Council by such officer as may from time to time be lawfully empowered to execute the same.

[a] As to the local repeal of section 133, see para. 5 of footnote [a] on P. I, *supra*.

[b—b] These words were inserted by Bom. IV of 1913, s. 64.

G. 1. The lands within the sites of towns and cities are to be continued revenue free in perpetuity if they are found at the time of the introduction of city survey to be in authorised occupation; but if at the introduction of the survey the lands are found to have been held subject to the payment of Land revenue, the terms of lease on which they are held, should be entered in the sanad. (G. R. No. 10347 dated 26th October 1909 and G. R. No. 482 dated 19th January 1910.)

G. 2. Sanads.—The form of sanads for building sites after city survey should be printed. (G. R. No. 12163 dated 7th December 1914.)

G. 3. The enquiry officer appointed by Government in charges of a city survey is the officer

empowered to execute sanads (item No 7 (e) in part N of the Resolution of the Government of India, No. 48—c—70—c. dated 8th November 1915, circulated with Government order. J. D. No. 341 dated 15th January 1916.)

G. 4. Government adhere to the orders contained in G. R. No. 10347 dated 26th October 1909, which directed that the Sanad should only recite and set out the nature of each tenure and should in no way alter the tenure. G. R. R. D. No. 9656 dated 9th October 1916.

G. 5. Sanads.—Memorandum from the Settlement Commissioner and Director of Land Records No. S. V.—16th dated 14th July 1916:—

7.....The sanads have been signed by the Personal Assistant to the Collector: but this is irregular and it is perhaps desirable to appoint Special officer under G. O. J. D. 341 dated 15th January 1916 to legalise the work done by him.

Memorandum from the Remembrance of Legal Affairs No. 2253 dated the 8th September 1916:—

"It is necessary for the validity of a sanad under section 133 of the Land Revenue Code that it should be executed by the officer empowered by the Home Department Resolution Nos. 713-734 dated 2nd June 1913. If the sanads in question were signed before the amending resolution Nos. 48-C-70-c dated 8th November 1915, they should have been signed by the Collector; if afterwards, by the special Officer. As it appears that the sanads in question were not so executed and the Government will perhaps consider it unnecessary to ask the Governor General in Council to ratify them, I think it will be advisable to issue new ones.

"2. The Home Department orders do not contemplate any delegation of powers and therefore in my opinion the Personal Assistant to the Collector was not empowered to sign on behalf, of a Collector before the issue of the amending orders."

Order.—Fresh sanads should be issued in accordance with the Legal Rembrancer's opinion. The name of the special officer whom it is proposed to appoint for the execution of the fresh sanads should be reported. (R. D. 10389 dated 30th October 1916).

[^a] **134.** If any land within the site of Assessment of lands hitherto used for purpose of agriculture only used for other purposes. any village, town, or city, hitherto ordinarily used for agricultural purposes only, with respect to which a summary settlement has been made between Government and the holder under the provisions of any law for the time being in force, be [^b] used for [^b] any other purposes, it shall be liable to payment of one-eighth of the rate fixed for unalienated land used for similar purposes in the same locality, in addition to the quit-rent payable under the terms of such summary settlement.

135. *Repealed by Bombay XI of 1912, section. 3.*

[a] As to the local repeal of section 134, see para. 5 of footnote [a] on p. I, *supra*.

[b—b] These words were substituted for the original words "appropriated to" by Bom. IV of 1913, s. 65.

N—1 Gordon settlement with the holders of Deshpande Watan etc. was not "under the provision of any law." It does not therefore fall under section 134 of the Land Revenue Code.

N—2 The $\frac{1}{8}$ th of the present standard rate cannot be permanently commuted under section 134 as it is liable to change after 50 years.

N—3 Vide N. 4 under section 65.

N—4 The wording of the sanad given in respect of Jat Inam Lands (summarily settled) precludes

Government from levying anything more than the quit rent, permanently fixed. The sanad does not authorize the levy of building assessment when the Land is used for building purposes. Government will have to respect the sanads already issued and it appears that this section, as it now stands, will have to be cancelled.

— 0 —

[a] CHAPTER X-A.

OF THE RECORD OF RIGHTS.

Exemption
from pro-
visions of
this chap-
ter.

135A. The Governor in Council may, by notification in the *Bombay Government Gazette*, direct that this chapter, or any specified provisions thereof, shall not be in force in any specified local area, or with reference to any lands or any class of villages or lands, or generally.

[a] This chapter was inserted by Bom, IV of 1913, s. 66.

It contains the provisions, redrafted and amended, of the repealed Record of Rights Act, (Bombay Act 4 of 1903).

N. I. The provisions of this chapter shall be in force in all areas except where Government directs to the contrary.

Formerly Government had exempted Inam villages and permanent municipal districts from the Record of Rights but that exemption has now been withdrawn in the case of surveyed Inam villages (except those in the Ratnagiri District) and in the case of permanent municipal districts. (G. N. No. 288 dated 11th January 1913 and G. N. No. 11581 dated 23rd December 1913).

G. I. Cantonments.—Government of India have negatived a proposal to secure a Record of Rights in lands and buildings in cantonments. (G. R. No. 4196 dated 21st May 1915).